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RAILROAD-SHIPPER TRANSPORTATION ADVISORY COUNCIL

c/o Surface Transportation Board

395 E Street S W

Washington, DC 20423-0001

May 19, 2008

To the Surface Transportation Board

The Honorable Charles Nottingham, Chairman

The Honorable Frank Mulvey, Vice Chairman

The Honorable Douglas Buttrey, Member

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Re Ex Parte No 677, Common Carrier Obligation of Railroads

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Public Record

To the Members of the Board

As you know, RSTAC is a statutory organization chartered to advise the Surface Transportation Board, US Department of Transportation, and the Congress with respect to matters affecting small shippers and small railroads

After considerable deliberation, RSTAC urges the STB to separate consideration of issues involving dangerous chemicals (toxic and poisonous inhalation hazard materials) from the broader proceeding involving the railroads' common carrier obligation. We believe that the TIH issues are not closely related to other common carrier obligation issues, and we believe that the solution to the TIH issues will be complex. Moreover, the Board stands in a unique position to sponsor a necessary dialogue among all affected parties that will narrow their differences, if not achieve outright consensus.

There is a broad public interest in achieving a successful outcome of such negotiations. The most prominent recent concern has been the possibility of loss of life incident to derailment of TIH materials. However, there are many other important public concerns that must be considered as well. These include such things as the manner in which drinking water will be protected, the need of farmers for fertilizer, the effect of restrictive operating protocols on rail capacity, and the extent to which it may or may not be desirable to divert dangerous chemicals to highway movement.

In addition, it is often overlooked that the present liability allocation system has a number of significant collateral effects. One is that there will be insufficient assets available to satisfy proven claims. Another is that TIH accidents may jeopardize the continuation of rail service on parts of the national system (in cases where the claimed amount exceeds the insurance proceeds and assets of the carrier involved). Yet another is that TIH and general merchandise share the same trains and facilities. A reduction in TIH traffic could diminish general merchandise service in unforeseen ways.

Review of proposals advocated by various groups with respect to TIH materials shows that there is a broad menu of possible action to choose from. We expect that a sponsored

negotiation among the parties is likely to lead to a mixture of many, if not all, of these proposals
Some of the things that the parties are urging include

- Changes in routing
- Changes in railroad operating practices
- Changes in pricing
- Product substitution
- Private insurance procured by shippers, carriers, or receivers
- Public insurance sponsored by government
- Statutory liability caps

The combination of multi-faceted public interest with the absence of a single, obvious policy solution makes it desirable to start now to find an answer. An answer formed hastily in response to a disaster is likely to be a bad one.

For that reason, we urge the Board to start a separate proceeding to deal with TIH materials and to use that proceeding as a vehicle to foster multilateral negotiations toward a workable policy. That policy may well include legislative recommendations.

Respectfully submitted,

RAILROAD-SHIPPER TRANSPORTATION ADVISORY COUNCIL


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